

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,)	CASE NO. 8:09CR419
)	
Plaintiff,)	
)	
vs.)	TENTATIVE FINDINGS
)	
DAVID CRESS,)	
)	
Defendant.)	

The Court has received the Revised Presentence Investigation Report (“PSR”) and the Defendant’s objections thereto (Filing No. 66). The government adopted the PSR (Filing No. 65). See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

The Defendant objects to ¶¶ 15 (drug quantity) and 91 (lack of suggested award for credit for time served).

The objection to ¶ 15 is denied because it does not affect the sentencing guideline calculation. The objection to ¶ 91 is denied for the reasons stated in the Addendum to the PSR and because, even if a departure under U.S.S.G. § 5K2.23 were appropriate, the Defendant agreed in his plea agreement not to request a downward departure under that guideline.

IT IS ORDERED:

1. The Defendant’s objections to ¶¶ 15 and 91 of the PSR are denied;
2. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion

challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

3. Absent submission of the information required by paragraph 2 of this Order, my tentative findings may become final; and

4. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 20th day of December, 2010.

BY THE COURT:

S/ Laurie Smith Camp
United States District Judge